UNITED STATES CIRCUIT COURT OF APPEALS.

(FOURTH CIRCUIT.)

MARIAN H. RICHARDSON, PETITIONER v. W. F. WOODWARD, TRUSTEE, ET. AL., RESPONDENTS.

Argued May 5, 1900. Decided November Term, 1900.

EXEMPTION—HOUSEHOLDER AND HEAD OF A FAMILY—MARRIED WOMAN.—*Chapter 178 of Virginia Code.* Under chapter 178 of the Virginia Code, a married woman may claim the benefit of the statutory exemption, though living with her husband, and though he contributes to the support of the family, provided she manages the business of the family and is regarded by the family as its head.

EXEMPTION—HUSBAND AND WIFE.—*Exemption to both.* The circumstance that the husband assists in the support of the family, and has already claimed his exemption as head of the family, under the "Poor Law" (Va. Code, sec. 3650), will not deprive the wife of her right to claim the exemption.

Heard before GOFF and SIMONTON, Circuit Judges, and PURNELL, District Judge.

Petition to superintend and revise in matter of law, proceedings of the District Court of the United States for the Eastern District of Virginia, at Richmond.

STATEMENT BY THE COURT:

Mrs. Marian H. Richardson, a married woman, conducted a mercantile business at Plum Point, under the style of J. L. Richardson, agent. J. L. Richardson, the agent, was her husband. The family consisted of the husband, the wife, and a daughter thirteen years old, all of whom resided in a house owned by the wife. Mrs. Richardson was the postmistress at Plum Point, and the postoffice was kept in the store, and managed by the husband, who conducted the business. Previous to entering into this business J. L. Richardson was a clerk for R. E. Richardson, and Mrs. Richardson boarded her husband and the other clerks of R. E. Richardson. Just when J. L. Richardson ceased to clerk for R. E. Richardson and opened business in his wife's name, does not appear; but about the 10th of May, 1898, Mrs. Marian H. Richardson made an assignment for the benefit of her creditors and closed the business.

She and her husband were both out of business from this time until about September, 1898, when J. L. Richardson again commenced

business in the same house as agent for T. J. Richardson, his brother.

During all the time he was conducting the business for his wife, while he was out of business and also while conducting business for T. J. Richardson, J. L. Richardson carried passengers back and forth from Plum Point to the station, and money made from this and other sources was used to aid his wife in supporting his family.

The goods conveyed in the assignment did not pay off the creditors of J. L. Richardson, agent, and on the 5th day of January, 1899, Mrs. Marian H. Richardson filed her petition praying to be adjudged a bankrupt, and on the next day the order of adjudication was entered. Afterwards, J. L. Richardson filed a petition in bankruptcy and claimed all his property under what is known in Virginia as the "Poor Debtors' Law" (sec. 3650 *et seq.*, Code of Virginia), which exempts certain chattels to "a householder or head of a family." Marian H. Richardson filed an amended petition and claimed her real property under what is known as the "Homestead Exemption Law," which exempts to a householder or head of a family $2,000 free from levy, garnishment or distress.

The title to the real estate is in the wife, Marian H. Richardson, and the husband testified the wife managed the business of the family; had always been regarded as the head of the family since their marriage, and he was an assistant or helpmate in getting along. That she was postmistress, took boarders, sewed and was a dressmaker. The petitioner on examination testified she was a householder and head of a family, she supported the family by the income from the store, conducted by her husband as her agent, and other sources.

R. T. Lacy and *John A. Lamb*, for petitioner.

Isaac Diggs, for respondents.

PURNELL, District Judge:

The only question presented and argued is, whether, being a married woman living with her husband, petitioner is entitled to the homestead exemption as "a householder or head of a family," as provided by the Constitution and laws of Virginia. No question of procedure is involved, as to whether the bankrupt had properly set up a claim for the exemption.

Section 6 of the Bankruptcy Act, approved July 1, 1898, provides:

"This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition."

The intention was to adopt the State laws governing exemptions, hence the courts of bankruptcy will look to and be governed by the constitutions, statutes and decisions of the several States and Territories in deciding who is entitled to exemptions and the amount and species of property to be exempt. A bankrupt is entitled to the same exemptions as if proceeded against as a debtor under the State law and none other. "Shall not affect" means shall not enlarge or diminish. In determining these exemptions, the bankrupt courts will follow the construction given the State laws by the highest courts of the State, the statute of which is involved. The decisions to this effect are numerous and uniform. But where there is no construction of a State law by the State courts, or there is a conflict of construction, and a proper case is presented involving a construction of State constitutions or statutes, the court of bankruptcy will, as other courts of the United States do, give it a construction to carry out the purport and intent of the Act of Congress; and section 2, ss. 11, provides the courts of bankruptcy shall determine all the claims of bankrupts to their exemptions. Otherwise they will follow the interpretation of the State courts. *Marly* v. *Lake Shore Ry. Co.*, 146 U. S. 162; *Provident Institution* v. *Massachusetts*, 6 Wall. 630; *Randal* v. *Bingham*, 7 Wall. 541.

It appears, was admitted in the argument, and is stated by the District Judge, that the courts of Virginia have not considered or decided the question involved in the case at bar. These courts have construed the Constitution and statutes referred to, but not as bearing upon or involved in this question of homestead exemptions. Had they done so, this court would follow their interpretation. In the absence of such decisions, this court must determine the claim of the bankrupt to exemptions, not upon any supposition of how the State courts would probably decide, but according to established rules of construction.

The husband does not claim the homestead exemption. The poor debtor's exemption of specific articles of personal property, which he has claimed, is provided for in a different statute, and can in no way affect a decision of the question under consideration. That is a personal property exemption, personal to the debtor. It is founded on a different policy.

The general rule is, exemption laws should be liberally construed. The Constitution of Virginia, Art. 11, sec. 7, emphasizes the rule and makes it more specific by providing "the provisions of this article shall be construed liberally to the end, that all the intents thereof may be fully and perfectly carried out." What was the legislative intent in the adoption of Article 11 of the Constitution of Virginia and the Acts of Assembly in pursuance thereof? "All the intents" to be fully and perfectly carried out?

Homestead laws are enacted as a matter of public policy, in the interest of humanity, that though a citizen may be overtaken by reverses of fortune, he and those of his household shall not be homeless, without shelter, raiment and food. The debtor's prison and attendant evils meet with little favor in modern legislation. The policy of the law is that families shall not be deprived of shelter and reasonable comforts. The State is concerned that the citizen shall not be divested of the means of support and reduced to pauperism. Thompson on Homesteads, page 1; Waples on Homestead, pages 3–4, and cases cited. The exemption is intended for the family. The decisions in Virginia do not controvert or differ from all the other authorities on this point, for Judge Staples, in delivering the opinion of the court in *Shipe, Cloud & Co.* v. *Repass*, 28 Gratt. 716, says, "No one can look into the provisions of our Constitution and the adjudicated cases of other States and fail to see that the primary object is to provide for the family." This policy is well stated in Waples on Homestead, at page 4:

"The conservation of family homes is the purpose of homestead legislation. The policy of the State is to foster family homes as the factors of society, and thus promote the general good. To save them from disintegration and secure their permanency, the legislator seeks to protect their homes from forced sales so far as it can be done without injustice to others. . . . . Families are the units of society, indispensable factors of civilization, the basis of the commonwealth; upon their permanency in any community, depends the success of schools, churches, public libraries and good institutions of every kind. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own castle, with a sense of its protection and durability."

The reverse effect would be produced by a sale of the homestead and destruction of home ties. Founded, therefore, on sound public policy, the homestead is intended for the family. It is not a "poor law."

Article 11 of the Constitution of Virginia secures, in addition to the articles now exempt, etc. (those claimed by the husband) to "every

householder or head of a family," an exemption not exceeding in value $2,000, to be selected by him. The personal pronoun, him, has no bearing as it may be construed her, for section 5, sub-division 13, Code of Virginia, provides, "a word importing the masculine gender only, may extend to and be applied to females as well as males."

Petitioner is a householder, for the title is in her, and the words "or head of a family" seem to be qualifying words, for it is conceded that an unmarried man could not under this provision claim the exemption; nor could one not a householder do so. The provision might therefore be read, "every householder who is the head of a family," which in the light of the decisions seems to be a proper paraphrase of the language. The husband could not claim the exemption, the title is in the wife, and he is not the householder. If then the wife cannot claim it, the primary object of the Constitution, as stated by Judge Staples, to secure a homestead for the family, is defeated, and the provision of section 7, Article 11 of the Constitution is inoperative, the article is not "liberally construed to the end that all the intents thereof may be fully and perfectly carried out."

The husband is generally, and for many purposes, the head of the family. He owes it as a moral duty to support his wife and children —a failure to do so is in many jurisdictions made a crime. He may say where they shall reside, but the home provided must be suitable or the wife would be justified in leaving him, if the place is not suitable. *Hutchins* v. *Hutchins*, 93 Va. 71. This was a divorce case, and in no way involved the question of homestead. The records of the courts show that husbands do not always discharge this and many other duties incumbent upon them. When he fails in these moral and legal obligations, when an intelligent, active, industrious, frugal woman finds she has married a man who, instead of coming up to the standard of husband, is a mere dependent, who acknowledges that he is only a helpmate to his wife, obeys her instructions, pours his little earnings into her lap, acknowledges her to be and to have always been the head of the family, and leaves to her its support, it would be contradictory of fact and an absurd construction of law to say he, and not she, is the head of the family, and deny to her the benefits intended for the family out of her separate estate, property she has accumulated, because the title is in her and she lives with her husband. This would seem to defeat instead of construing the law "to the end that all the intents thereof may be fully and perfectly carried out."

While there are no decisions on the question under consideration, an

authority on State law, whose opinion is entitled to great respect, not only within but beyond the limits of the State, in discussing this question, says: "A married woman with separate property and a family may, it seems, claim the privilege of homestead; but she and her husband can have but one exemption between them." Minor's Institutes, Vol. 4, part 1, page 1007, and for this Thompson on Homestead, section 64, 220–226, and cases cited, is quoted as authority. To the same effect is Waples on Homestead, page 63. This last authority says "the law recognizes husband and wife as the united head of their family for homestead purposes. It allows either to own the property upon which the homestead privilege of both is based. It allows either to claim the benefit when the other does not." Under the Code of Virginia many of the disabilities of a married woman have been removed by statute, and she is entitled "to hold, control and use her separate estate as if she were sole, and by her own act encumber, convey, devise, bequeath or otherwise dispose of it in the same manner and with like effect as if she were unmarried." Code, chapter 103. She may engage in trade and carry on business for her separate use and benefit the same as though she were unmarried. She may make contracts as if sole, in respect to such trade, business, labor, services and her said estate, or upon the faith and credit thereof. Section 2288. And she may sue and be sued as though she were unmarried. Section 2289. In short, she has been liberated from many of the restrictions and disabilities of the common law, and placed upon a higher plane in the eye of the law. In many of the States, having laws similar to the Virginia Constitution, where the question has been decided, where the married women owned the fee and were the debtors, they have been allowed to claim the homestead exemptions, and in those States the rights of married women were not as liberal as under the statutes above cited. *Partee* v. *Stewart*, 50 Miss. 720; *Brigham* v. *Bush*, 33 Barb. (N. Y.) 596; *McPhee* v *O'Rouke*, 10 Col. 301; *Crane* v. *Waggner*, 33 Ind. 83; *Wilson* v *Cockran*, 31 Tex. 680; *Orr* v. *Shraft*, 22 Mich. 260; Thompson on Homesteads, 220–224; Waples on Homesteads, 64–66. The wife may represent the united head of the family in applying for homestead, upon the husband's request or upon his neglect to apply in behalf of the family. Waples, page 64, citing *Bowen* v. *Bowen*, 55 Ga. 182; *Cling* v. *Rogers*, 54 Ga. 168; *Smith* v. *Ezell*, 51 Ga. 570; *Page* v. *Page*, 50 Ga. 597; *Lawrence* v. *Evans*, 50 Ga. 216; *Connelly* v. *Hardwick*, 61 Ga. 501; *Farly* v. *Hopkins*, 79 Cal. 203. If the wife owns the fee she is the

proper person to have it made the family reservation or exempt home. She has thus the dedication of her own separate property. Waples, page 64.

The case of *Partee et al.* v. *Stewart*, cited, resembles the case at bar; the words used in the Mississippi statute are: "The head of every family, being a white person and a housekeeper." On page 721 of that case, Judge Simrall, in delivering the opinion of the court, used the following language:

"She was the exclusive owner; the marital rights of the husband did not extend to the income, rents, and profits; she could lease without the concurrence of her husband and could put the lessee in possession of the premises, including the buildings. Having this large control over the property, she was certainly within the reason of the statute, and we think within its words. The debtor must both own and reside upon the land; must be a householder and have a family. Under that policy which secures to the wife all the property owned by her at the time of the marriage, and all subsequent acquisitions, there must be a multitude of instances where all the means for the support of the family are exclusively hers; and the argument is just as strong to protect her homestead from seizure and sale as where the property belongs to the husband and he is the debtor."

Brigham v. *Bush & Perry*, cited, is parallel to the case at bar. The New York statute proivdes that certain property "when owned by a person being a householder shall be exempt." The court held that Mrs. Brigham, although married, was entitled to hold a part of her separate estate as exempt under the New York statute.

McPhee v. *O'Rouke* is in point. The Colorado statute provides that "every householder in the State of Colorade, being the head of the family, shall be entitled to a homestead not exceeding in value the sum of two thousand dollars, etc." The court held that a married woman owning separate estate was entitled to the benefit of the act.

Crane v. *Waggner*, referred to above, is similar to the case at bar. Section 1 of the homestead laws of Indiana provides: "That an amount of property not exceeding in value three hundred dollars, owned by any resident householder, shall not be liable to sale or execution or any other final process from a court," etc. A judgment was obtained against the wife and levied upon the property which formed a part of her separate estate. The wife was residing with her husband, and claimed the property levied upon as exempt to her as a homestead. The court held the wife was entitled to hold the property levied upon as exempt, and that her property being less than $300 in value the wife and husband had the right to claim a joint homestead.

Judge Ray, in delivering the opininion of the court, used the following language:

"The language of the law must therefore be construed with regard to the declared objects and purposes to be accomplished, and effect given so far as reasonably can be to the constitutional declaration. The plain intent is to preserve a home or support for the family, and not for its head as distinguished from its members. Where, therefore, the husband and wife are living together, and the property of the husband does not reach the limit fixed by law, and the wife is the owner of the property levied upon and yet claimed as exempt, and is herself the real debtor in the judgment and execution, we must regard her claim to exemption as valid, to the extent necessary to make, with her husband's property, the amount protected by the statutes."

While denominating the husband as the head of the family, this joint head of the family for the purpose of homestead exemptions is recognized in South Carolina in the constitution, statutes and the decisions. Constitution South Carolina, Art. 3, sec. 28. Rev. Stat. 2132. *In re McCutchen*, 4 N. B. R. 81, 100 Fed. Rep. 779.

Under the rule of construction in the Constitution, for the reasons given, under the circumstances of the case, the conclusion is there is error. The wife living with her husband, having a separate estate, and being the debtor, may be the head of the family, or there may be a joint head of the family, for homestead purposes.

Certainly there are decisions which might tend to a different conclusion, but the weight of authority is to the effect that where the wife is the owner of the property, where she trades as a feme sole, and is the debtor, and the husband cannot and does not claim the homestead exemption, the wife, though living with her husband, may be alone, or jointly with him, the head of the family, and as such claim the homestead exemption. Under the circumstances of the case at bar, the petitioner, a married woman living with her husband, is entitled to the homestead exemption, and there was error in refusing to allow such claim.

The decree of the District Court is reversed, and the cause remanded that the claim for the homestead exemption by the bankrupt be allowed.

Reversed.

NOTE.—The ruling in this case, that under the Virginia statute of exemptions, a married woman, living with her husband—the husband being actively engaged in business, and devoting all his earnings to the support of his family—may claim the benefit of the statutory exemption as a householder and head of a family, establishes a principle of much practical importance, if the decision is to be followed by the State courts. It is somewhat remarkable that the question of the

right of a wife to claim the benefit of the exemption has not heretofore arisen in our Court of Appeals.

The authorities upon the question of the wife's right in such case are collected in 15 Am. & Eng. Enc. Law (2d ed.), 546–547, from which it would seem that in numbers they are about equally divided. Authorities on the subject, however, are of little assistance outside of their local jurisdiction, unless studied in immediate connection with the statute construed. Wide diversity exists in the language of the exemption laws of the several States, and cases construing one of these statutes are to be received with caution in interpreting the statute of a different State.

A careful reading of Chapter 178 of the Virginia Code indicates, in unmistakeable terms, that it was not drawn on the theory that the exemption might be claimed by a married woman. For example, in order to alienate real estate set apart as exempt, the *wife* must unite (sec. 3634)—but there is no corresponding provision as to the *husband's* uniting in the wife's exempt realty; after the death of the householder, the exemption is continued to his *widow* and minor children (sec. 3635)—but not to the surviving *husband* and children; and if not set apart by the householder, it may be done by his *widow* and children (sec. 3636); if the *widow* receives dower, she waives the exemption (sec. 3637)—but the effect of the *husband's* acceptance of curtesy is unprovided for; estate set apart and held by the *widow* and children, may be sold for reinvestment, by a prescribed judicial proceeding (sec. 3641)—but no method is provided by which a surviving *husband* similarly situated may have the benefit of such proceeding; in case the householder dies without *wife* or children surviving, or upon the death or remarriage of the *widow* and the attainment of their majority by the children, or their marriage, the exemption ceases (sec. 3649)—but no provision is made for the case of the surviving *husband's* death or remarriage. In short, nothing could be plainer than that the draughtsman of this chapter did not once contemplate that the householder for whom the exemption was provided could be a married woman. Whether the liberal construction enjoined by the Constitution warrants reading into the statute what the legislature deliberately omitted from it, is not entirely clear.

One may imagine a case which would strongly appeal to the sympathies of the court, and possibly justify some departure from the language of the statute—a case, for example, where the husband is an invalid, incapable of providing for his family—or has deserted his family—the wife thereby becoming in fact its head and main support. But in the principal case, the husband seems to have been able-bodied, industrious and energetic. The wife was nominally postmistress and owner of the store in the conduct of which the plaintiff's debts were incurred, but the husband himself conducted both the postoffice and the store, and also ran a hack line. Not only this, but he had actually claimed exemption under the "Poor Law" (Code, sec. 3650) as a householder and head of a family. Under these circumstances, there would seem to be some difficulty in allowing the wife's claim, unless a family may have two heads. Whether this anomalous condition can legally exist under Chapter 178, can be authoritatively settled only by the decision of the State court of last resort.

The statement by the court in the principal case, that an unmarried man cannot claim the exemption, nor one who is not a householder, and that the exemption can be claimed only by a householder "who is the head of a family," runs counter to the doctrine of *Calhoun* v. *Williams*, 32 Gratt. 18, and *Wilkinson* v. *Merrill*,

87 Va. 513, and to the accepted doctrine in Virginia, that in order to claim the benefit of the exemption, the debtor need neither be married nor need he own or occupy a house; all that is necessary is that the debtor shall be the "head of a family"—section 3657 of the Code, as amended by Acts of 1887–8, p. 423, declaring that the term "householder" shall be equivalent to "householder *or* head of a family." The exemption law of Virginia differs from that of many of the other States, in permitting the debtor to claim his exemption in personalty as well as realty. It is not therefore properly a "homestead" exemption, as in many of the States. The word homestead does not occur once, we believe, in Chapter 178 of the Code. This difference should be borne in mind in applying the decisions of courts of other States to the Virginia statute. In the principal case, the fact that the wife owned the home seems to have influenced the court in holding her to be a "householder." It may be conceded that where the purpose of the statute is to secure a "homestead"—that is, real estate occupied as a home for the family—and this homestead happens to belong to the wife, there is strong ground for permitting her to claim it. But, as shown, this is not the theory on which the Virginia statute is drawn.